IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5698 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARSINHBHAI GOVINDBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5698 of 1991

MR DHIRENDRA MEHTA for Petitioner No. 1

MR SIRAJ GORI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 17/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article

226 of the Constitution is the order dated 27.3.1991 (Annexure "E") passed by the Entertainment Tax Commissioner, Gujarat State, rejecting the petitioner's revision application against the order dated 17.6.1990 (Annexure "D") passed by the Entertainment Tax Collector, Jamnagar dismissing the petitioner's appeal against the order dated 15.9.1989 (Annexure "B") of the Mamlatdar, Bhanvad and Prescribed Officer under the Entertainment Tax Act (hereinafter referred to as "the Act") levying entertainment tax of Rs.9072/- under Section 9(1) of the Act and also imposing penalty of Rs.13608/- under Section 9(3) of the Act.

2. The petitioner is the proprietor of Ashish Video Centre at Verad in Jamnagar district. The petitioner was granted licence for running a video centre with capacity of 30 seats. After the licence was issued on 19.12.1986, inspection was made by the Entertainment Tax Inspector on 29.3.1989 when he reported that there were 78 spectators in the video centre and that none of them was issued any ticket. The petitioner had thus committed breach of the provisions of Section 7 of the Act and had also committed breach of Section 21 by not maintaining accounts in the prescribed registers. On the basis of the report of the said Officer, the Prescribed Authority and Mamlatdar, Bhanvad issued show cause notice and after hearing the petitioner passed the impugned order dated 15.9.1989 (Annexure "B") making the best judgment assessment and levying tax on the basis that the petitioner had admitted 60 spectators everyday for 112 days i.e. from 8.12.1988 to 29.3.1989. Apart from levying entertainment tax of Rs.9072/- on the above basis, the Prescribed Authority also imposed maximum penalty of one and a half times the tax amount. The petitioner carried the matter in appeal and in revision, without any success. Hence, this petition.

3. At the hearing of this petition, Mr Dhirendra Mehta, learned advocate for the petitioner has submitted that the revisional authority has dismissed the petitioner's revision application without considering the submissions made before the revisional authority and apart from such non-consideration, the revisional authority went to the extent of putting admissions in his mouth by stating in the order that the learned advocate for the petitioner admitted that the petitioner had admitted 78 spectators in the video centre with capacity of only 30 spectators. Mr Mehta has invited our attention to the submissions made in paragraph 10-A of the petition as permitted to be added by this Court vide order dated 20.8.1991 and also to the notice dated

18.7.1991 and the letter dated 13.5.1991 addressed by the learned advocate himself to the Entertainment Tax Commissioner pointing out that he had not made any concession or admission about the number of spectators who were present in the video centre at the time of inspection and the reply dated 20.5.1991 of the authority to the effect that as the revision application was already disposed of nothing could be done in the matter. It is submitted that when the sitting capacity of the video centre was only 30, it was not possible for 78 spectators to be present in the video centre.

In the alternative, it is submitted that in any view of the matter the authorities have not given any reason or justification for imposing the maximum penalty when the assessment itself is penal by levying tax from the petitioner as if 60 spectators had attended the daily shows for all the 112 days from the date of licence granted to the video centre.

4. On the other hand, Mr Gori, learned AGP has opposed the petition and submitted that all the three authorities have given concurrent findings of fact and there is no warrant for interference with the impugned orders, particularly, when the irregularity found to have been committed by the petitioner was so gross.

5. Having heard the learned counsel for the parties, we would first like to refer to the fact that the averments made on oath in paragraph 10-A of the amended petition that the learned advocate for the petitioner has not made any admission or concession before the revisional authority has remained uncontroverted. Even the letter dated 20.5.1991 to the letter/notice dated 13.5.1991 sent by the petitioner denying any admission or concession having been made by the learned advocate does not indicate that the learned advocate had made the statement as recorded in the order, but the said letter dated 20.5.1991 merely states that since the revision application was disposed of, nothing could be done in the matter. Both the letters dated 13.5.1991 and 20.5.1991 are taken on record.

6. The challenge to the concurrent findings of fact given by the three authorities cannot be accepted in so far as all the three authorities have given the concurrent finding that the petitioner had admitted more spectators than the sitting capacity of the video centre and without issuing any tickets to them. Even so, since the revisional authority has confirmed the order of penalty on the basis of the alleged concession or

admission made by the learned advocate for the petitioner that 78 spectators were admitted to the video centre at the time of inspection and in view of the fact that the authorities have already made the best judgment assessment at twice the number of spectators as compared to the sitting capacity mentioned in the licence and since the penalty at one and a half times of the tax assessment is the maximum penalty, we are inclined to interfere with the order of the revisional authority in so far as the order of penalty is confirmed by the revisional authority.

7. This would have ordinarily required the matter to be remanded to the revisional authority for rehearing and reconsidering the question of quantum of penalty, however, considering the fact that the illegality and irregularity in question took place in the year 1988-89 and this petition is pending since 1991, the interests of justice would be served if the order of penalty is modified by reducing the penalty from one and a half times the amount of tax assessed to that of the amount equal to the tax assessed. In other words, over and above the entertainment tax of Rs.9072/- as assessed by the authorities under the impugned orders, the petitioner shall pay penalty of an equal amount i.e. tax Rs.9072 + penalty Rs.9072.

The amount already paid/deposited by the petitioner at the time of filing of the appeal (stated to be Rs.4550/-) and the amount deposited by the petitioner pursuant to the interim order dated 4.9.1991 of this Court (stated to be Rs.8000) shall be adjusted against the aforesaid final liability of the petitioner for the relevant period.

It is directed accordingly.

8. The petition is accordingly party allowed in respect of the order of penalty. Challenge to the rest of the assessment is negatived.

Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. SHAH, J.)

(D.A. MEHTA, J.)
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